Supreme Court, U.S.
FILED

94 733 AUG - 9 1994

OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

AUGUST TERM, 1994

GEORGE JONES - PETITIONER

vs.

UNITED STATES--RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI

GEORGE JONES, PETITIONER
2758 PORTER COURT
GLENVIEW, IL 60025

14 pp

QUESTIONS:

PETITIONER WAS NOT" RESPONSIBLE PERSON " UNDER SECT. 6672 OF THE INTERNAL REVENUE CODE,26 U.S.C & 6672 (1988).

THE PARTNERSHIP WAS ONLY ON THE PAPER FOR CONSTRUCTION PURPOSE,HAS NOT BEEN DULY REGISTERED,DID NOT PAID ANY TAXES,DII NOT HAVE ANY PAYROLLS,DID NOT HAVE ANY EMPLOYEES AND DID NOT MADE ANY PROFITS,.

DAVID C. HOPPMANN PAID TAXES IN QUESTION AND THIS IS PENALTY(CIVIL) WHICH PETITIONER WAS NOT RESPONSIBLE BEING AN EMPLOYEE OF THE CORPORATION.

No. _____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

AUGUST TERM, 1994

GEORGE JONES, - PETITIONER

vs.

UNITED STATES, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE FEDERAL CIRCUIT

Petitioner, GEORGE JONES, respectfully prays that a writ of certiorary issue to review the judgment and opinion of the United States Court of Appeals for the FEDERAL Circuit refusing to enter and

enclose the fact that Petitioner was only employed by the company and not a "responsible person" under section 6672 IR Code, 26 U.S.C. & 6672(1988). Evidence of employment is attached and signed by the President and Vice President of the company. Appendix "C" attached.

OPINIONS BELOW

The opinion of the Court of Appeals is attached and appears in Appendix A to this Petition.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on May 9, 1994. A timely Petition for Rehearing was filed on July 11, 1994. The Court of Appeals' denial of the Petition for Rehearing was also issued on July 11, 1994 and is set in Appendix B, attached.

STATEMENT OF THE CASE

The United States Court of Appeals did not take in consideration that Petitioner submitted evidence and proof that he was only an employee of the company and not a "responsible person" to collect the taxes. That, the Partnership was never in existence on the paper, never had a tax number and never paid any taxes, never made any profit or had any employees on the payroll. That, David C. Hoppmann, as President of the corporation paid all taxes and the money in question is civil penalty taxes, which I have paid after the judgment.

REASONS FOR GRANTING THE WRIT

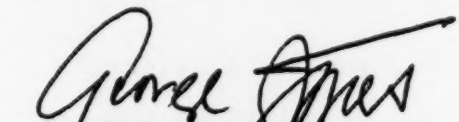
Certiorary should be granted for the reason: Petitioner was not a "responsible person" under section 6672 of the Internal Revenue Code, 26 U.S.C. & 6672(1988). The Partnership was only on the paper for construction purpose, never

had any employees, never had any payroll, never had any tax number and never paid any taxes because it has not been in existence, and Petitioner was only employee of the corporation. See Appendix "C".

CONCLUSION

For the reasons set forth above a writ of certiorary should issue to review the judgment and opinion of the Court of Appeals in this matter.

August 3, 1994 Respectfully submitted,



George Jones
2758 Porter Court
Glenview, IL 60025

"A"

United States Court of Appeals for the Federal Circuit

94 - 5041

GEORGE JONES,

Plaintiff-Appellant,

v.

THE UNITED STATES,

Defendant-Appellee.

Judgment

ON APPEAL from the UNITED STATES COURT OF FEDERAL CLAIMS

in CASE NO(S). 92 -425T

This CAUSE having been heard and considered it is ORDERED and ADJUDGED.

AFFIRMED

DATED-MAY--9-1994

ENTERED BY ORDER OF THE COURT

Francis X. Gindhart, Clerk

ISSUED AS A MANDATE: MAY 31,1994

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

United States Court of Appeals for the Federal Circuit

94-5041

GEORGE JONES,

Plaintiff-Appellant,

v.

THE UNITED STATES,

Defendant-Appellee.

DECIDED: May 9, 1994

Before MAYER, LOURIE, and SCHALL, Circuit Judges.

PER CURIAM.

George Jones appeals the October 28, 1993 judgment of the United States Court of Federal Claims, No. 92-425T, dismissing his complaint for a refund of taxes paid and granting judgment for the United States on its counterclaim for $4,074.40 unpaid assessed interest plus statutory interest. We affirm.

Jones challenges the determination by the Court of Federal Claims that he is a "responsible person" under section 6672 of the Internal Revenue Code, 26 U.S.C. § 6672 (1988). He argues that his partner, David C. Hoppmann, who controlled the financial aspects of the business, should be held responsible for nonpayment of trust fund taxes. But Jones does not recognize that more than one person

BEST AVAILABLE COPY

can be held liable under section 6672. White v. United States, 372 F.2d 513, 516 (Ct. Cl. 1967). It makes no difference whether his partner is also a "responsible person," for Jones can be liable as well so long as he had the power to control the decision-making process by which the partnership decided to meet its debts to other creditors at the government's expense. Godfrey v. United States, 748 F.2d 1568, 1575 (Fed. Cir. 1984).

Jones was a full partner in the business. The court found that he participated actively in the management of the partnership, which assumed the assets and liabilities of Hoppmann's corporation pursuant to the partnership agreement. Jones had primary responsibility for the partnership's construction projects and was one of three partners with equal authority to issue checks to pay partnership debts. The court also found that he took part in meetings where nonpayment of taxes was discussed, and he joined in the decision not to pay. The determination that these facts establish Jones' power to avoid the default, and that the decision to pay creditors other than the government was willful, was based in large part on the credibility of trial witnesses and is not clearly erroneous.

"B"

United States Court of Appeals for the Federal Circuit

94 - 5041

GEORGE JONES,

Plaintiff-Appellant,

v.

THE UNITED STATES,

Defendant-Appellee.

O R D E R

O R D E R

Before MAYER, Circuit Judge, LOURIE, Circuit Judge, and SCHALL, Circuit Judge.

A petition for rehearing having been filed by the APPELLANT,

UPON CONSIDERATION THEREOF , it is

ORDERED that the petition for rehearing be, and the same hereby is , DENIED.

the mandate has already issued.

FOR THE COURT,

FRANCIS X. GINDHART, CLERK

Dated: July 11, 1994

by Diane M. Frye
Chief Deputy Clerk

cc: GEORGE JONES
GARY R. ALLEN

JONES V US, 94-5041
(CFC - 92 -425T)

FILED
US COURT OF APPEALS FOR
THE FEDERAL CIRCUIT
JUL 11 1994
FRANCIS X. GINDHART
CLERK

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* *
* Note: Pursuant to Fed.Cir. R. 47.6, this order is not *
* citable as precedent. It is a public record. *
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In the United States Court of Federal Claims

No. 92-425 T

GEORGE JONES,

JUDGMENT

v.

FILED OCT 28 1993

THE UNITED STATES

Pursuant to the court's opinion of October 25, 1993,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that the complaint is dismissed, and that defendant, on its counterclaim, recover of and from plaintiff the sum of $4,074.40, plus statutory interest from November 9, 1992. No costs.

David A. Lampen
Clerk of Court

October 28, 1993

By:
Deputy Clerk

NOTE: As to appeal, 60 days from this date, see RCFC 72, re number of copies and listing of all plaintiffs. Filing fee is $105.00.

"C"

COMPANY STATIONARY

General
Contractors

HOPPMANN
& ASSOCIATES, INC.,
1322 Ridge Avenue
Evanston, Illinois
60201
328-5511

August 18, 1987

TO WHO' IT MAY CONCERN:

This is to cerify that Mr. George Jones is permanently employed with our company with annual salary of $ 52,000.00.

Sincerely yours,

Thomas Dewey, VP

"C"

COMPANY STATIONARY

General
Contractors

HOPPMANN
& ASSOCIATES, INC.,
1822 Ridge Avenue
Evanston, Illinois 60201
328-5511

November 4, 1987

TO WHOM IT MAY CONCERN:

This is to certify that Mr. George Jones is permanently employed by our company since 1979 as a general construction manage with a salary of $ 52,000 annually.

Sincerely yours,

David C Hoppmann, Signature
HOPPMANN & ASSOCIATES, INC.,